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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON  
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8 UNITED STATES OF AMERICA,

No. 2:15-CR-031-JLQ-2

9 Plaintiff,

10 vs.

ORDER GRANTING  
DEFENDANT'S MOTION FOR  
RELEASE FROM CUSTODY

11 FLOYD DEAN BEST, JR,

12 ☒ Motion Granted  
(ECF No. 90)

13 Defendant.

14 At the August 19, 2015, hearing on Defendant's Motion for release from  
15 custody, ECF No. 90, Defendant was present with counsel Ronald A. Van Wert.  
16 Assistant U.S. Attorney Matthew Duggan represented the United States.

17 The Court previously had considered detention at a hearing on June 10,  
18 2015. Prior to that hearing, the Court considered the Bail Report, ECF No. 58.

19 At the June 10<sup>th</sup> hearing, the United States presented the testimony of United  
20 States Deputy Marshal Perry, to the effect that Defendant was a flight risk because  
21 one "Mr. France" claimed that Defendant was concealing his identity by altering  
22 Defendant's tattoos, and Defendant was found outside the jurisdiction and believed  
23 to be using false ID. The United States further argued the 18 U.S.C. § 3142(e)(3)  
24 presumption that no combination of conditions will assure community safety or  
25 Defendant's appearance because Defendant is charged with a drug crime, with a  
26 maximum penalty of 10 years or more.

27 Defendant argued his residency in this District since infancy, questioned the  
28 credibility of "Mr. France," and pointed out that the Bail Report opined that the

1 Court could fashion conditions of release that would assure community safety and  
2 Defendant's attendance.

3 The Court granted the United States' Motion for detention, ECF No. 60.

4 Defendant subsequently moved for a rehearing, ECF No. 90, and the Court  
5 held a second hearing on August 19, 2015. This Order memorializes that hearing.

6 The Court again reviewed the Bail Report, and the memorandum of defense  
7 counsel, ECF No. 90. The Court delayed the start of hearing for approximately 25  
8 minutes so that defense witnesses could be present, but when the witnesses  
9 appeared Defendant did not present their testimony.

10 In arguing for conditions of release to be set, Defendant proffered that "Mr.  
11 France," to whom information was attributed in the June 10 hearing, was  
12 unreliable because that person had stolen personal property from Defendant, that  
13 Defendant was not attempting to conceal his identity by altering tattoos but merely  
14 trying to obliterate the name of his ex-wife while leaving other unique and  
15 identifiable tattoos unaltered, and that at no time did he have false ID and in fact  
16 was apprehended in Utah because he was using his proper ID at a retail store there.

17 Defendant also asks the Court to consider that he is suffering from an  
18 abscessed tooth and is unable to obtain the desired treatment in the facility where  
19 he is held, is allergic to mustard but is not being accommodated by the jail, and  
20 that because of overcrowding, he has not been provided meaningful access to the  
21 jail legal library.

22 Subsequent to the hearing, Defendant filed a declaration noting that he had  
23 scheduled a substance abuse evaluation for August 28, 2015. ECF No. 109.

24 The United States continued to advocate for detention, reasserted the  
25 rebuttable presumption in 18 U.S.C. § 3142(e)(3), and proffered that, while  
26 Defendant was initially charged with conspiracy to distribute 50 grams or more of  
27 a substance containing methamphetamine, subsequent investigation revealed that  
28 the relevant amount was over 100 grams, potentially subjecting Defendant to a

1 mandatory 10-year term of imprisonment, and thus increasing the risk of flight.  
2 The United States also argued that Defendant's prior criminal record supported  
3 detention.

4 The Court has considered the above circumstances in light of the factors  
5 enumerated in 18 U.S.C. § 3142, including:

6 **I. The nature and circumstances of the offense charged**

7 The Affidavit in support of the Complaint alleges that in a series of  
8 controlled buys from Defendant personally, Defendant and others conspired to  
9 introduce significant quantities of methamphetamine into the community. To the  
10 extent that Methamphetamine is a dangerous drug, this circumstance weighs  
11 against release.

12 **II. The weight of the evidence against the Defendant**

13 "Controlled buys" are generally considered strong evidence, though the  
14 weight of the evidence is the least important consideration in evaluating whether  
15 release conditions can be fashioned. This weighs but slightly against release.

16 **III. Defendant's history and characteristics, including:**

17 **Character** – A defendant's character *per se* is difficult to assess. Typical  
18 factors such as industriousness evidenced by steady employment, loyalty and  
19 support of family, law abiding behavior and avoiding illegal drugs are all discussed  
20 in separate headings. This factor weighs neither for nor against release.

21 **Physical and mental condition** – There is no indication that Defendant is  
22 physically or mentally impaired, or otherwise lacks the wherewithal to comply  
23 with conditions of release. This weights slightly in favor of release.

24 **Family ties** – Defendant has family members in the Pacific Northwest, but  
25 his ties are not strong. This weighs against release. Both parents are deceased.  
26 Defendant has one adult child, with whom he says he has a good relationship and  
27 speaks frequently. But the Bail Report suggests Defendant may not have been  
28 aware that his son moved to Montana a year ago. Defendant reports he has not

1 spoken to his sister in Montana in several years, and “does not have a lot of  
2 contact” with a half-sister.

3 **Employment** – Defendant is not presently employed, but he reports past  
4 employment in the “overhead door” business, and possessing a certificate in  
5 welding and a CDL license allowing him to drive commercial trucks. Defendant  
6 has also supported himself through self-employment extracting metals. These  
7 circumstances weigh in favor of release.

8 **Financial resources** – Defendant reports no income at the present time, and  
9 receiving no government assistance. He owns property he inherited, lives in a shop  
10 there, and benefits from his girlfriend’s disability income. That Defendant would  
11 have means of support while out of custody weighs in favor of release.

12 **Length of residence in the community** – Defendant reports being a  
13 resident of central Washington State, within the Eastern District of Washington,  
14 since infancy, and living in the same shop / residence throughout that time. This  
15 favors release.

16 **Community ties** – Defendant owns the property where he resides, and this  
17 may be considered a significant tie to the community, and weighs in favor of  
18 release.

19 **Past conduct** – Defendant’s past conduct is largely unknown, understanding  
20 that criminal activity, appearance for court and drug abuse are accounted for under  
21 other sections. The Court notes that Defendant was arrested on this charge while  
22 traveling some two states away, while apparently unemployed, approximately a  
23 month after his half-brother and alleged co-conspirator was taken into custody.  
24 These facts were not objected to, and no explanation was offered. The Court is  
25 reluctant to speculate or assign weight to these circumstances.

26 **History relating to alcohol and drug abuse** – Defendant’s long-time  
27 methamphetamine use, aggravated by alcohol consumption and that fact that he  
28 has not received treatment, weighs significantly against release.

1        **Criminal history** – Defendant’s criminal history is significant, occurs at a  
2 steady pace throughout his adult life, reflecting involvement in illegal drugs,  
3 domestic violence and property crimes. This weighs against release.

4        **Record concerning appearance at court proceedings** – Defendant’s  
5 record of appearing for court is poor. The Bail Report outlines at least seventeen  
6 instances. While this number may be of less impact considering that some  
7 warrants were for minor traffic cases, and counsel’s argument that other warrants  
8 may have been issued when Defendant was in custody and unable to appear, this  
9 nevertheless weighs against release.

10       **Whether Defendant was under supervision at the time of the alleged**  
11 **offense** – Defendant had not completed a 2-year conditional suspension of a  
12 February 15, 2013, theft sentence, by the time the charged conspiracy allegedly  
13 commenced in June of 2014. If a sentence suspended for a specific period on  
14 certain conditions is construed as a period of “supervision,” this weighs against  
15 release.

16 **IV. And the nature and seriousness of the danger to the community posed**  
17 **by Defendant's release –**

18 Defendant’s history of being under the influence of and distributing  
19 methamphetamine, and his history of Failure to Appear warrants indicating a  
20 reluctance to comply with court-ordered conditions, suggest that pretrial release  
21 presents a risk to the community unless it can be controlled by conditions.

22 The Court, having considered the proffers of Defendant and Plaintiff, and 18  
23 USC § 3142, finds the United States has not met it’s burden of showing by a  
24 preponderance that no combination of conditions will reasonably assure the  
25 Defendant’s appearance for further proceedings, nor by clear and convincing  
26 evidence that no combination of conditions will reasonably assure the safety of the  
27 community if Defendant is released pending trial.

28 The Court finds that a combination of conditions will reasonably assure the

1 Defendant's appearance and the safety of the community.

2 Accordingly Defendant's Motion, **ECF No. 90**, is **GRANTED**.

3 Defendant shall be released on August 28, 2015, under the conditions  
4 specified below.

5 **STANDARD CONDITIONS OF RELEASE**

6 (1) Defendant shall not commit any offense in violation of federal, state or local  
7 law. Defendant shall advise the supervising Pretrial Services Officer and  
8 defense counsel within one business day of any charge, arrest, or contact  
9 with law enforcement. Defendant shall not work for the United States  
10 government or any federal or state law enforcement agency, unless  
11 Defendant first notifies the supervising Pretrial Services Officer in the  
captioned matter.

12 (2) Defendant shall immediately advise the court, defense counsel and the U.S.  
13 Attorney in writing before any change in address and telephone number.

14 (3) Defendant shall appear at all proceedings as required and shall surrender for  
15 service of any sentence imposed as directed.

16 (4) Defendant shall sign and complete A.O. Form 199C before being released  
17 and shall reside at the address furnished.

18 (5) Defendant shall not possess a firearm, destructive device or other dangerous  
19 weapon.

20 (6) Defendant shall report to the United States Probation Office before or  
21 immediately after release and shall report as often as they direct, at such  
22 times and in such manner as they direct.

23 (7) Defendant shall contact defense counsel at least once a week.

24 (8) Defendant is further advised, pursuant to 18 U.S.C. § 922(n), it is unlawful  
25 for any person who is under indictment for a crime punishable by  
26 imprisonment for a term exceeding one year, to possess, ship or transport in  
27 interstate or foreign commerce any firearm or ammunition or receive any  
28 firearm or ammunition which has been shipped or transported in interstate or  
foreign commerce.

- 1 (9) Defendant shall refrain from the use or unlawful possession of a narcotic  
2 drug or other controlled substances defined in 21 U.S.C. § 802, unless  
3 prescribed by a licensed medical practitioner in conformance with Federal  
4 law. Defendant may not use or possess marijuana, regardless of whether  
5 Defendant has been authorized medical marijuana under state law.
- 6 (10) Defendant shall surrender any passport to Pretrial Services and shall not  
7 apply for a new passport.

8 **ADDITIONAL CONDITIONS OF RELEASE**

- 9 (14) Defendant shall remain in the Eastern District of Washington while the case  
10 is pending. By timely motion clearly stating whether opposing counsel and  
11 Pretrial Services object to the request, Defendant may be permitted to travel  
12 outside this geographical area.
- 13 (15) Avoid all contact, direct or indirect, with any persons who Defendant would  
14 reasonably know are or may become a victim or potential witness in the  
15 subject investigation or prosecution. Pretrial Services may but is not  
16 required to exempt specific named individuals from this prohibition,  
17 including but not limited to immediate family members or co-workers.
- 18 (16) Avoid all contact, direct or indirect, with known felons and/or Co-  
19 Defendant(s). Pretrial Services may but is not required to exempt specific  
20 named individuals from this prohibition, including but not limited to  
21 immediate family members or co-workers.
- 22 (18) Refrain from any use of alcohol.
- 23 (19) There shall be no alcohol in the home where Defendant resides.
- 24 (20) There shall be no firearms in the home where Defendant resides.

25 **SUBSTANCE ABUSE EVALUATION AND TREATMENT**

26 If Defendant is required to submit to a substance abuse evaluation, inpatient  
27 or outpatient treatment, the following shall apply:

28 **Defendant shall complete treatment indicated by an evaluation or**



1 **recommended by Pretrial Services and shall comply with all rules of a**  
2 **treatment program.** Defendant shall be responsible for the cost of testing,  
3 evaluation and treatment, unless the United States Probation Office should  
4 determine otherwise. The United States Probation Office shall also determine the  
time and place of testing and evaluation and the scope of treatment.

5 Prior to commencing any evaluation or treatment program, Defendant shall  
6 provide waivers of confidentiality permitting the United States Probation Office  
7 and the treatment provider to exchange without qualification, in any form and at  
8 any time, any and all information or records related to Defendant's conditions of  
release and supervision, and evaluation, treatment and performance in the program.  
9 It shall be the responsibility of defense counsel to provide such waivers.

10 Following any evaluation or treatment ordered here, Defendant shall  
11 complete any recommended aftercare program.

12 **If Defendant terminates any treatment program before it is completed,**  
13 **the treatment provider and Defendant shall immediately notify the U.S.**  
14 **Probation Officer.**

15 **If Defendant leaves an inpatient program before treatment is**  
16 **completed, the treatment facility and Defendant shall immediately notify the**  
17 **U.S. Probation Officer or, if the U.S. Probation Officer is unavailable, the U.S.**  
18 **Marshal, who shall in turn immediately notify the undersigned. Defendant**  
**shall comply with all directives of the U.S. Probation Officer.**

19 *PROVIDED* that Defendant's treatment and release from custody is on the  
20 express condition that treatment not hinder or delay the adjudication of this case,  
21 and that Defendant appear in person when required regardless of treatment status,  
and maintain adequate contact with defense counsel.

22 **(24) Substance Abuse Evaluation:** Defendant shall participate in a substance  
23 abuse evaluation.

24 Prior to release, Defendant must have an appointment for a substance abuse  
25 evaluation, and the appointment must be confirmed to the Court by Pretrial  
26 Services. **Whereupon the Court will execute the A.O. Form 199C**  
27 **referenced in Condition #4 above, and release Defendant to such**  
28 **evaluation.** The AO 199C form will specify when and to whom Defendant  
is to be released.



1 **(27) Prohibited Substance Testing:** If random urinalysis testing is not done  
2 **through a treatment program, random urinalysis testing shall be**  
3 **conducted through Pretrial Services, and shall not exceed six (6) times**  
4 **per month.** Defendant shall submit to any method of testing required by the  
5 Pretrial Service Office for determining whether the Defendant is using a  
6 prohibited substance. Such methods may be used with random frequency  
7 and include urine testing, the wearing of a sweat patch, a remote alcohol  
8 testing system, and/or any form of prohibited substance screening or testing.  
9 Defendant shall refrain from obstructing or attempting to obstruct or tamper,  
10 in any fashion, with the efficiency and accuracy of prohibited substance  
11 testing.

### 12 **HOME CONFINEMENT/ELECTRONIC/GPS MONITORING**

13 **(28)** Defendant shall participate in one or more of the following home  
14 confinement program(s):

15 **Electronic Monitoring:** The Defendant shall participate in a program of  
16 electronically monitored home confinement. The Defendant shall wear, at  
17 all times, an electronic monitoring device under the supervision of U.S.  
18 Probation. In the event the Defendant does not respond to electronic  
19 monitoring or cannot be found, the U.S. Probation Office shall forthwith  
20 notify the United States Marshals' Service, who shall immediately find,  
21 arrest and detain the Defendant. The Defendant shall pay all or part of the  
22 cost of the program based upon ability to pay as determined by the U.S.  
23 Probation Office.

24 OR

25 **GPS Monitoring:** The Defendant shall participate in a program of GPS  
26 confinement. The Defendant shall wear, at all times, a GPS device under the  
27 supervision of U.S. Probation. In the event the Defendant does not respond  
28 to GPS monitoring or cannot be found, the U.S. Probation Office shall  
forthwith notify the United States Marshals' Service, who shall immediately  
find, arrest and detain the Defendant. The Defendant shall pay all or part of  
the cost of the program based upon ability to pay as determined by the U.S.  
Probation Office.

AND

1 **Curfew:** Defendant shall be restricted to his/her residence every day from  
2 **7:00 p.m. to 7:00 a.m.**

3 If a party desires that another Court review this order pursuant to 18 U.S.C.  
4 § 3145, that party shall promptly file a motion for review before the district judge  
5 to whom the case is assigned, as further described in the Detention Order Review  
6 Protocol published for the Eastern District of Washington. Both parties shall  
7 cooperate to insure that the motion is promptly determined.

8 DATED August 21, 2015.

A handwritten signature in black ink, appearing to be "M", is written over a horizontal line.

JOHN T. RODGERS  
UNITED STATES MAGISTRATE JUDGE